

1 JOHN S. BLACKMAN (SB#114654)
2 MARGARET A. BURTON (SB#193386)
3 FARBSTEIN & BLACKMAN
4 A Professional Corporation
5 411 Borel Avenue, Suite 425
6 San Mateo, California 94402-3518

7 Telephone: (650) 554-6200
8 Facsimile: (650) 554-6240

9 Attorneys for Defendants
10 MARK GARIBALDI and THE GARIBALDI COMPANY

11 UNITED STATES DISTRICT COURT
12
13 NORTHERN DISTRICT OF CALIFORNIA
14

15 EDITH MACIAS, individually and on
16 behalf of similarly situated individuals;
17 HOTON DURAN; TIFFANY HUYNH;
18 AURA MENDIETA; WILLIAM
19 LABOY; MIGUEL ACOSTA; CRUZ
20 ACOSTA; CUAUHTEMOC TORAL,
21 TERESA VILLEGAS, KAPIKA
22 SALAMBUE and MARINA DURAN,

23 Plaintiffs,

24 vs.

25 THOMAS J. TOMANEK; and MARK
26 GARIBALDI, individually and doing
27 business as THE GARIBALDI
28 COMPANY,

Defendants.

CASE NO. C07 3437 JSW

[PROPOSED] ORDER GRANTING
DEFENDANTS MARK GARIBALDI
AND THE GARIBALDI COMPANY'S
MOTION:

1. TO DISMISS RICO CLAIM FOR
FAILURE TO STATE A CLAIM [FRCP
12(b)(6)]
2. TO DISMISS STATE COURT
CLAIMS FOR LACK OF SUBJECT
MATTER JURISDICTION [FRCP
12(b)(1)]

DATE: January 11, 2008
TIME: 9:00 a.m.
COURTROOM: 2, 17th Floor
JUDGE: Hon. Jeffrey S. White

1 The motions of defendants Mark Garibaldi and The Garibaldi Company to dismiss
2 the First Amended Complaint for failure to state a claim and for lack of subject matter
3 jurisdiction, came on regularly for hearing on January 11, 2008, The Honorable Jeffrey S.
4 White, presiding. John S. Blackman, Esq. appeared for defendants Mark Garibaldi and
5 The Garibaldi Company. Sara B. Allman, Esq. appeared for defendant Thomas J.
6 Tomanek. Elizabeth Brancart, Esq. appeared for plaintiffs.

7 WHEREFORE, the court having read and considered the file and papers
8 submitted, and having heard arguments of counsel, and good cause appearing;

9 IT IS HEREBY ORDERED THAT:

- 10 1. The motion of defendants Mark Garibaldi and The Garibaldi Company to
11 dismiss plaintiffs' RICO claim for failure to state a claim is granted;
12 2. The motion of defendants Mark Garibaldi and The Garibaldi Company to
13 dismiss the First Amended Complaint for lack of subject matter jurisdiction
14 is granted; and
15 3. The entire action is hereby dismissed.

16 SO ORDERED.

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18 DATED: _____

19 THE HONORABLE JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE
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PROOF OF SERVICE

Macias v. Tomanek, , Mark Garibaldi, The Garibaldi Company
 USDC, Northern California, Case No. C 07-3437 JSW

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. I am employed in the office of a member of the bar of this court at whose direction the service was made. My business address is 411 Borel Avenue, Suite 425, San Mateo, California 94402-3518. My electronic notification address is stf@farbstein.com. On October 18, 2007, I served the following document(s):

**[PROPOSED] ORDER GRANTING DEFENDANTS MARK GARIBALDI AND THE
 GARIBALDI COMPANY'S MOTION:**

1. TO DISMISS RICO CLAIM FOR FAILURE TO STATE A CLAIM [FRCP 12(b)(6)]
2. TO DISMISS STATE COURT CLAIMS FOR LACK OF SUBJECT MATTER
 JURISDICTION [FRCP 12(b)(1)]

on the following person(s) by the method(s) indicated below:

Elizabeth Noonan Brancart, Esq. Christopher A. Brancart, Esq. Brancart & Brancart P. O. Box 686 Pescadero, CA 94060	Attorneys for plaintiffs Tel: 650-879-0141 Fax: 650-879-1103 email: cbrancart@brancart.com ebrancart@brancart.com
Sara B. Allman, Esq. Allman & Nielsen 100 Larkspur Lndg Cir #212 Larkspur, CA 94939	Farmers attorney Tel: 415-461-2700 Fax: 1-415-461-2726 all-niel@pacbell.net

☐ by transmitting via facsimile on this date from fax number (650) 554-6240 the document(s) listed above to the fax number(s) set forth herein. The transmission was completed before 5:00 p.m. and was reported complete and without error. The transmission report is attached to this proof of service. Service by fax was made by agreement of the parties confirmed in writing.

☒ by placing the document(s) listed above in a sealed envelope(s) with postage thereon fully prepaid, for deposit in the United States mail at San Mateo, California addressed as set forth herein. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day, with postage thereon fully prepaid in the ordinary course of business.

☒ by transmitting the document(s) listed above via the Court's ECF system to the persons at the email address(es) set forth herein. The transmission was completed before 5:00 p.m. and was reported complete and without error.

I declare under penalty of perjury under the laws of the United States and the State of California that the above is true and correct. Executed at San Mateo, California, on October 18, 2007.


 SUZANNE T. FARBSTEIN